IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 15TH OCTOBER 2007 / 23RD ASWINA 1929

ST.Rev..No. 280 of 2004

ORDER DATED 26.6.2001 IN TA.285/1999 OF THE KERALA SALES TAX APPELLATE TRIBUNAL, ADDITIONAL BENCH, KOTTAYAM
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REVISION PETITIONER/ASSESSEE/APPELLANT:

THOMAS MICHAEL,
MANARKATTU HOUSE,
PALA.

BY ADV. SMT.S.K.DEVI
SRI.M.RAJ MOHAN
SRI.SANTHOSH P.ABRAHAM
SMT.DEEPSUR D.JAYAN
SRI.FRANKUR D.JAYAN
SRI.K.P.PRADEEP (PAYYANNUR)
SRI.SHANMUGHAM D. JAYAN
SMT.P.K.MAYA DEVI

RESPONDENT/REVENUE/RESPONDENT:

STATE OF KERALA,
REPRESENTED BY ITS FINANCE SECRETARY,
SECRETARIAT, TRIVANDRUM.

BY SR.GOVERNMENT PLEADER MR.MUHAMMED RAFIQ

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 15/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L.Dattu,C.J. & K.T.Sankaran,J.

S.T.Rev.No.280 of 2004

Dated, this the 15th day of October, 2007

ORDER

H.L.Dattu,C.J.

The orders passed by the Kerala Sales Tax Appellate Tribunal, Additional Bench, Kottayam in T.A.No.275 of 1999 dated 26th June, 2001 is the subject matter of the revision petition filed by the assessee under Section 41 of the Kerala General Sales Tax Act ("Act" for short).

(2) The assessment year in question is 1992-93. The assessee is a second seller of arrack.

(3) The assessing authority has computed the tax liability of the petitioner by her orders dated 31.3.1998. The said assessment orders are confirmed by both the first appellate authority as well as the Tribunal.

(4) When the assessing authority has passed the orders of assessment for the assessment year 1992-93 dated 31.3.1998, she did not have the advantage of the orders passed by a Division Bench of this Court in the case of *M/s.Aiswarya Traders, Mavelikara* v. *The Sales Tax Officer, Mavelikara & others*, W.A.No.1374 of 1998 dated 30th June, 2005, nor the Tribunal had the advantage of the aforesaid order.

(5) In the aforesaid decision, a Bench of this Court at paragraph 9 has observed as under:

> "We find it difficult to accept the interpretation given by the learned single Judge. The apex court in *Polestar Electronic (P) Ltd.* v. *Addl.Commr.,* 1978 (41) STC 409 held that a statutory enactment must ordinarily be construed according to the plain natural meaning of its language and no words should be added, altered or modified unless it is plainly necessary to do so in order to prevent a

> provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute. This rule of literal construction is firmly established and it has received judicial recognition in numerous cases. A Full Bench of this Court in *Kurian Abraham (P) Ltd*. v. *Asst. Commissioner,* 2004 (1) KLT 498 (FB) held that the provisions of a taxing statute have to be construed strictly. A person cannot be taxed unless the provisions clearly provides for it. The words of the statute or the relevant entry have to be given their true and natural meaning. The authority cannot add to the words. It cannot impose a levy by reading an implication into the plain words of the provision. There is no room for intendment. The words of the statute cannot be strained. Strict letter of law has to be seen. While interpreting sub-section (14) of section 7 we cannot strain the language or read the words "tax paid" as "tax payable". What is intended by the Legislature is all that the Government shall receive 20% of the rental amount in total as tax on sale of arrack. That is the reason why the tax paid on the purchase of arrack at the first sale point is ordered to be deducted so that the total tax received would become 20% of the rental amount. When we interpret the above quoted provision it is evident that the rate of tax applicable to an unregistered dealer is 62.5%. Assessee's case is that he had paid tax at that rate. If that be so, in our view, the claim raised by the assessee is justifiable".

(6) In view of the orders passed by the Division Bench in the aforesaid decision, we cannot sustain the orders passed by the assessing authority, first appellate authority as well as the Tribunal. Therefore, we make the following:

Order

(i) The orders passed by the assessing authority dated 31.3.1998, the first appellate authority dated 7.6.1999 and the Tribunal dated 26.6.2001 are set aside.

(ii) Now the matter is remanded to the assessing authority to recompute the tax liability of the petitioner-assessee in accordance with law keeping in view the observations made by a Division Bench of this Court in the aforesaid decision.

(iii) This exercise, the assessing authority shall complete within a period of three months from today.

(iv) After completion of the assessment proceedings, the assessing authority shall issue revised demand notice to the petitioner-assessee.

Ordered accordingly.

H.L.Dattu
Chief Justice

K.T.Sankaran
Judge

vku/-